

## **CLASS ACTION SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Agreement”), effective as of the last date of execution set forth below, is made by and between Plaintiffs Joshua Lewis, James Cavanaugh, and Nathaniel Timmons (“Plaintiffs”), on behalf of themselves and the Settlement Class (defined below), and Defendant Lytx, Inc. (“Lytx” or “Defendant”; and collectively with Plaintiffs, the “Parties”). This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below) against the Released Parties (as defined below), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

### **RECITALS**

WHEREAS, on October 13, 2021, Plaintiff James Cavanaugh, individually and on behalf of a putative class, filed a class action lawsuit against Lytx in the United States District Court for the Northern District of Illinois alleging violations of the Illinois’ Biometric Information Privacy Act (“BIPA”), designated as *Cavanaugh v. Lytx, Inc.*, No. 1:21-cv-05427 (N.D. Ill.) (the “Cavanaugh Action”).

WHEREAS, on November 17, 2021, Plaintiff Joshua Lewis, individually and on behalf of a putative class, filed a class action lawsuit against Lytx and Maverick Transportation LLC (“Maverick”)<sup>1</sup> in the Circuit Court of Madison County, Illinois, No. 2021L001379, alleging violations of BIPA, which was subsequently removed to the United States District Court for the Southern District of Illinois (the “Court”), in the action *Lewis v. Lytx Inc., et al.*, No. 3:22-cv-00046-NJR (S.D. Ill.) (the “Lewis Action”).

WHEREAS, on December 29, 2021, Plaintiff Nathaniel Timmons, individually and on behalf of a putative class, filed a class action lawsuit against Lytx and Gemini Motor Transport, L.P. (“Gemini”) in the United States District Court for the Northern District of Illinois alleging violations of BIPA, designated as *Timmons v. Lytx Inc., et al.*, No. 1:22-cv-05068 (N.D. Ill.) (the “Timmons Action”).

WHEREAS, pursuant to an unopposed motion, the Timmons Action was reassigned to the Hon. Edmond Chang and related to the Cavanaugh Action under Local Rule 40.4. Subsequently, on November 10, 2022, a Consolidated Amended Complaint was filed in the Cavanaugh Action (*see* Cavanaugh Action, Dkt. 49), adding Plaintiff Nathaniel Timmons and Defendant Gemini Motor Transport, L.P., which was accepted by the court on February 29, 2024 (*see id.*, Dkt. 87).

WHEREAS, on December 19, 2022, Lytx filed a motion to dismiss, with a supporting memorandum of law in the Lewis Action (*see* Lewis Action, Dkt. Nos. 49-51), which Mr. Lewis opposed (*see id.*, Dkt. 52). On June 26, 2023, the Court denied Lytx’s motion to dismiss (*see id.*, Dkt. 68), and Lytx filed its Answer on August 7, 2023 (*see id.*, Dkt. 79), which it subsequently amended (*see id.*, Dkt. 83). Discovery proceeded in the Lewis Action in accord with the Court’s order dated September 21, 2023. *See id.*, Dkt. 90.

WHEREAS, on February 29, 2024, the Cavanaugh Action Court overruled Gemini’s objection to consolidation and denied its request for severance and a stay of claims against it. *See* Cavanaugh Action Dkt. 87. On April 12, 2024, Lytx and Gemini filed a joint motion to dismiss, with a supporting memorandum of law in the Cavanaugh Action (*see id.*, Dkt. Nos. 92 and 93),

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<sup>1</sup> On March 9, 2023, the Court granted final approval of a class action settlement between Plaintiff Lewis and Maverick that resolved all claims against Maverick and dismissed it from the

which Mr. Cavanaugh and Mr. Timmons opposed (*see id.*, Dkt. 100). That motion remains pending against Gemini, but the Court granted Mr. Cavanaugh's, Mr. Timmons', and Lytx's joint motion to stay claims against Lytx pending this Settlement (*see id.*, Dkt. 115).

WHEREAS, on April 29, 2024, the Court in the Lewis Action entered an Amended Scheduling Order (*see* Lewis Action, Dkt. 95) and an order referring this case to the Mandatory Mediation Program (*see id.*, Dkt. 96).

WHEREAS, Mr. Lewis and Lytx filed a Joint Motion to Stay all proceedings in the Lewis Action pending mediation (*see id.*, Dkt. 98), which the Court granted (*see id.*, Dkt. 99).

WHEREAS, on September 12, 2024, counsel in the Cavanaugh and Lewis Actions jointly mediated the Cavanaugh and Lewis Actions. While the cases did not settle at the end of the full-day mediation before Hon. Judge James R. Epstein (Ret.), the Parties continued to negotiate with the aid of Hon. Judge Epstein (Ret.) and thereafter agreed to a mediator's proposal. As a result of these further negotiations and with the assistance of Hon. Judge Epstein (Ret.), the Parties were able to reach an agreement in principle on September 20, 2024, which they reported to the Court on that same date. *See id.*, Dkt. 113.

WHEREAS, over the next several weeks the Parties continued to negotiate a term sheet, which was ultimately executed on October 14, 2024, and provides that Plaintiffs, in connection with the Settlement, shall file an amended complaint in the Lewis Action to add Plaintiffs Cavanaugh and Timmons as Named Plaintiffs.

WHEREAS, Lytx, at all times, has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it committed any wrongful act or violation of law or duty alleged in the Action. Nonetheless, taking into account the uncertainty and risks

inherent in any litigation, Defendant has concluded that it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Defendant, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

WHEREAS, Plaintiffs maintain the strength of their position, the validity of their claims and the propriety of class certification in this Action. Nonetheless, Plaintiffs believe settlement is appropriate, because, in part, Lytx has produced evidence to persuade Plaintiffs that its technology provides Lytx with a strong defense that Lytx's technology does not collect, capture, possess, obtain, store, use, disseminate, disclose, or profit from biometric identifiers or information, and that proving Lytx technology does otherwise would present a significant challenge and a substantial burden upon Plaintiffs should this matter proceed to summary judgment or trial. Plaintiffs and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through pleadings, motions, class certification, summary judgment, trial, and any subsequent appeals. Plaintiffs and Class Counsel have also taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiffs believe it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on their evaluation, Class Counsel have concluded that the terms and conditions set forth in this Agreement (the "Settlement") are fair, reasonable, and adequate to the Settlement

Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and among Plaintiffs and Defendant, by and through their undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

### **AGREEMENT**

#### **1. DEFINITIONS**

As used in this Agreement and the related documents attached as Exhibits A (Proposed Order Granting Preliminary Approval); B (Email Notice); C (Postcard Notice); D (Long-Form Notice); E (Claim Form); F (Proposed Order Granting Final Approval); and G (Proposed Amended Complaint), the following terms have the meanings specified below:

1.1 **“Action”** means the civil action entitled *Lewis v. Lytx Inc., et al.*, No. 3:22-cv-00046-NJR (S.D. Ill.) following the anticipated addition of Plaintiffs Cavanaugh and Timmons in *Cavanaugh v. Lytx, Inc.*, No. 1:21-cv-05427 (N.D. Ill.) for the purposes of settlement.

1.2 **“Agreement”** or **“Settlement Agreement”** means this Class Action Settlement Agreement and Release, including all attached and/or incorporated exhibits.

1.3 **“Amended Complaint”** means the Amended Complaint being filed with this Settlement Agreement that adds Plaintiffs Cavanaugh and Timmons as Named Plaintiffs in the Action.

1.4 **“Approved Claim”** means a Claim Form submitted by a Settlement Class Member that is submitted timely and in accordance with the directions on the Claim Form and the provisions of this Agreement and approved by the Settlement Administrator pursuant to the provisions of this Agreement.

1.5 **“Attorneys’ Fees and Costs”** means all fees, costs and expenses to be awarded as per the Settlement of this Action pursuant to the Fee and Cost Application.

1.6 **“CAFA Notice”** refers to the notice requirements imposed by 28 U.S.C. § 1715(b).

1.7 **“Cash Award”** means a cash payment to an eligible Class Member.

1.8 **“Claim Form”** means the document substantially in the form attached hereto as Exhibit E, as approved by the Court. The Claim Form, to be completed by Settlement Class Members who wish to file a claim for a payment, shall be available in electronic and paper format in the manner described below.

1.9 **“Claims Deadline”** means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be no later than ninety (90) calendar days after the Notice Date. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

1.10 **“Class Counsel”** means the law firms of Carney Bates & Pulliam PLLC; Lieff Cabraser Heimann & Bernstein LLP; Milberg Coleman Bryson Phillips Grossman PLLC; Workplace Law Partners, P.C.; Werman Salas P.C.; and Nick Larry Law LLC.

1.11 **“Class Period”** means October 12, 2016, through the earlier of Preliminary Approval or January 1, 2025.

1.12 **“Class Representatives” or “Plaintiffs”** means the named Plaintiffs Joshua Lewis, James Cavanaugh, and Nathaniel Timmons, the latter two who will be added as Plaintiffs in the Amended Complaint.

1.13 **“Court”** means the United States District Court for the Southern District of Illinois, the Honorable Nancy J. Rosenstengel presiding, or any judge who shall succeed her as the Judge in this Action.

1.14 **“Data Privacy Agreements”** are agreements governing the use of Class Member information provided by Defendant’s customers.

1.15 **“Days”** means calendar days, unless otherwise noted. When a deadline or date under this Agreement falls on a weekend or a legal Court holiday, the deadline or date shall be extended to the next business day that is not a weekend or legal Court holiday.

1.16 **“Defendant” or “Lytx”** means Lytx, Inc.

1.17 **“Defendant’s Counsel”** means the law firm of Cozen O’Conner.

1.18 **“DriveCam”** means a Lytx DriveCam® Event Recorder, including all models thereof (e.g., SF300, SF400, etc.).

1.19 **“Effective Date” or “Final”** means one (1) business day following the later of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award or Service Award, the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, if any, and all proceedings arising out of any subsequent appeal(s) following decisions

on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari* with respect to the Final Approval Order.

1.20 **“Efficacy Information”** has the meaning set forth in Section 7.4.

1.21 **“Escrow Account”** means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation. Defendant shall cause the Settlement Fund to be deposited into the Escrow Account in accordance with the terms of this Agreement and the money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund. The Escrow Account shall be maintained by the Settlement Administrator.

1.22 **“Fee and Cost Application”** means that written motion or application by which Plaintiffs and/or Class Counsel requests that the Court award Attorneys’ Fees and Costs and the Service Awards. This shall be submitted to the Court and made available on the Settlement Website by no later than twenty-one (21) days before the Objection Deadline and Opt-Out Deadline.

1.23 **“Final Approval Hearing”** means the hearing before the Court, no sooner than 120 days from the Notice Date, to: (a) determine whether to grant final approval to this Settlement Agreement as fair, reasonable, and adequate; (b) consider any timely objections to this Settlement and all responses thereto; and (c) rule on the Fee and Cost Application.

1.24 **“Final Approval Order and Judgment”** means an order granting final approval of the Settlement, substantially in the form of Exhibit F to this Agreement, in which the Court



grants final approval of this Settlement Agreement, finally certifies the Settlement Class, and authorizes the entry of a final judgment and dismissal of the Action with prejudice. The Court's adoption of the substantive terms of the proposed Final Approval Order and Judgment (Exhibit F) is a material term of this Settlement Agreement. In the event the Court issues separate orders addressing the matters constituting final settlement approval, the Final Approval Order includes all such orders.

1.25 **“Funding Date”** means seven (7) business days after (i) the Effective Date, or (ii) receipt of a W-9 form and payment instructions from the Settlement Administrator, whichever is later.

1.26 **“Litigation”** means this Action together with the Cavanaugh Action and Timmons Action.

1.27 **“Long Form Notice”** means the notice that shall be made available on the Settlement Website, in the form attached hereto as Exhibit D.

1.28 **“MV+AI”** means the Machine Vision + Artificial Intelligence algorithm in use at any time during the Class Period, which predicts distracted driving behaviors.

1.29 **“Net Settlement Fund”** means the Settlement Fund after subtracting the Settlement Costs (defined below).

1.30 **“Notice” or “Notices”** means the notice of this proposed Class Action Settlement Agreement and the Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, is consistent with the requirements of Due Process, Rule 23, and is substantially in the form of Exhibits B, C, and D hereto.

1.31 **“Notice Date”** means the date by which the Notice set forth in Section 7 commences, which shall be no later than seventy (70) days after Preliminary Approval.

1.32 **“Objection Deadline”** means sixty (60) days following the Notice Date.

1.33 **“Opt-Out Deadline”** means sixty (60) days following the Notice Date.

1.34 **“Person”** means, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their spouses, heirs, predecessors, successors, representatives, parents, subsidiaries, or assigns. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

1.35 **“Preliminary Approval Order”** means the Order entered by the Court, substantially in the form of Exhibit A to this Agreement, that grants the relief requested in the Motion for Preliminary Approval, including preliminarily approving the Settlement and Notice Plan. The Court’s adoption of the substantive terms of the proposed Preliminary Approval Order (Exhibit A) is a material term of the Settlement Agreement.

1.36 **“QSF”** means a court-approved Qualified Settlement Fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-1 in which will be deposited the Settlement Fund.

1.37 **“Release”** means the releases set forth in Section 12 of this Settlement Agreement.

1.38 **“Released Claims”** means any and all claims, liabilities, demands, causes of action, and lawsuits, whether known or unknown, filed or unfiled, asserted or as of yet unasserted, existing or contingent, whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever, including, but

not limited to, claims that were or could have been brought in the Litigation or any other actions filed (or to be filed) by Plaintiffs or Class Members against the Released Parties arising out of or relating to the capture, collection, storage, possession, transmission, conversion, purchase, obtaining, sale, lease, profit from, disclosure, re-disclosure, dissemination, transmittal, conversion and/or other use of data derived from the use of a DriveCam device between October 12, 2016 and the earlier of Preliminary Approval or January 1, 2025, including, but not limited to, claims arising out of the Illinois Biometric Information Privacy Act, 740 ILCS 14/10, *et seq.* This release includes, without limitation, statutory, constitutional, contractual, and/or common law claims for damages (including statutory and liquidated damages), unpaid costs, penalties, liquidated damages, punitive or exemplary damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief to the extent permitted by applicable law which may arise from the Released Claims. Nothing herein is intended to release any claims any governmental agency or governmental actor has against Defendant.

1.39 **“Released Parties”** means Defendant Lytx and its current and former affiliates, parents, subsidiaries, and divisions, and each of their owners, officers, directors, shareholders, members, agents, employees, attorneys, insurers, benefit plans, predecessors, successors, and assigns. For the avoidance of doubt, this definition does not cover any third-party beneficiaries of the Released Parties, including, in the Cavanaugh Action, Defendant Gemini.

1.40 **“Releasing Parties”** means Plaintiffs, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors,

investment advisors, legal representatives, successors in interest, and companies, firms, trusts, and corporations.

1.41 **“Service Award”** means the service payments to the Class Representatives, in accordance with Section 4.2 of this Settlement Agreement.

1.42 **“Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice (including CAFA notice), processing claims, responding to inquiries from members of the Settlement Class, coordinating payment for Approved Claims, and related administrative services.

1.43 **“Settlement Administrator”** means EisnerAmper.

1.44 **“Settlement Class”** means all individuals who, while present in the State of Illinois, operated a vehicle equipped with a DriveCam, and for whom MV+AI was used to predict distracted driving behaviors, between October 12, 2016 and the earlier of Preliminary Approval or January 1, 2025.

1.45 **“Settlement Class Member”** or **“Class Member”** means a Person who falls within the definition of the Settlement Class as set forth above and who does not timely submit a valid request for exclusion.

1.46 **“Settlement Costs”** means: (i) Settlement Administration Expenses; (ii) Class Counsel’s Court-approved attorneys’ fees and reimbursement of reasonable costs; (iii) Court-approved Service Awards paid to Plaintiffs; and (iv) any other Court-approved deductions.

1.47 **“Settlement Fund”** means the non-reversionary cash fund that shall be established by or on behalf of Defendant in the total amount of four million, two hundred and fifty thousand dollars (\$4,250,000.00 USD) to be deposited into the Escrow Account, according to the schedule set forth herein, plus all interest earned thereon. The Settlement Fund is the total

sum that Lytx will pay in connection with this Agreement, regardless of the size of the Settlement Class, deposited into a common fund for payment of (i) distributions to Settlement Class Members, (ii) the Fee Award, (iii) the Service Awards, and (iv) all Settlement Administration Expenses.

1.48 **“Settlement Payment”** means a *pro rata* portion of the Settlement Fund less any applicable tax withholdings, Settlement Administration Expenses, Service Awards to the Class Representative, and Fee Award.

1.49 **“Settlement Website”** means the Internet website operated and maintained by the Settlement Administrator as described in Section 7.3.5.

1.50 **“Unknown Claims”** means claims that could have been raised in the Action or are otherwise released by this Agreement and that Plaintiffs, any member of the Settlement Class, or any Releasing Party do not know or suspect to exist, which, if known by him, her or it, might affect his, her, or its agreement to release the Released Parties or the Released Claims or might affect his, her, or its decision to agree, to object, or not to object to the Settlement.

## 2. **SETTLEMENT TERMS AND BENEFITS TO THE SETTLEMENT CLASS**

2.1 **Monetary Consideration.** Defendant shall pay or cause to be paid, in total, \$4,250,000 (four million two hundred and fifty thousand dollars) into the QSF for the benefit of the Settlement Class (the “Settlement Payment”) by wire transfer or check to a bank account identified by the Settlement Administrator on or before the Funding Date (i.e., the Settlement Fund). Funding will only occur after the Settlement Administrator provides Defendant with a completed W-9 and payment instructions. The Settlement Fund will be maintained by the Settlement Administrator for the benefit of the Settlement Class Members and Class Counsel. All of the monies deposited by Defendant into the Settlement Fund will be placed in an interest-

bearing escrow account established and maintained by the Settlement Administrator. The interest generated, if any, will accrue to the benefit of the Settlement Class and is to be added into the Settlement Fund. This sum will be used to pay Approved Claims and any Settlement Costs. In no event will Defendant be required to pay any more than \$4,250,000 (four million two hundred and fifty thousand dollars) in connection with the Settlement.

2.2 The Settlement Administrator shall establish and deposit the Settlement Fund into a single account, with insurance that exceeds any amounts deposited in that account, chosen in the best judgment of the Settlement Administrator to preserve the fund and facilitate the payment of Settlement Costs and other expenditures approved by the Court.

2.3 All portions of the Settlement Fund expended by the Settlement Administrator for settlement administration or notice costs shall be non-refundable to Defendant. Upon the Effective Date, Defendant shall have no further ownership interest in the Settlement Fund. The Settlement Administrator may only use the Settlement Fund consistent with the terms of the Settlement. Upon receipt of the Settlement Fund, the Settlement Administrator is authorized to deduct notice and administration costs without further Court approval.

2.4 The Settlement Fund will be used for the benefit of the Settlement Class and shall not revert to Defendant. Notwithstanding the foregoing or any other provision in the Settlement, if the Settlement fails to achieve the Effective Date or the Settlement is terminated pursuant to Section 14 below, Class Counsel shall return any attorneys' fees, costs, and expenses ordered by the Court within three (3) business days (including any interest that would have accrued on such attorneys' fees, costs, and expenses had it remained in the Settlement Fund) after Defendant provide notice to Class Counsel that the Settlement has failed to achieve the Effective Date or that the Settlement has been terminated, and the Settlement Administrator shall return all monies

remaining in the Settlement Fund, including any interest that has accrued, to Defendant within fourteen (14) business days after it receives notice that the Settlement has failed to achieve the Effective Date or that the Settlement has been terminated. The Settlement Administrator may deduct all Settlement Costs it has incurred prior to the date it received such notice.

2.5 Defendant shall pay or cause to be paid into the Escrow Account portions of the Settlement Amount to pay for Settlement Administration Expenses as those become due. Defendant shall pay or cause to be paid into the Escrow Account the remainder of the Settlement Amount no later than the Funding Date.

### 3. SETTLEMENT BENEFITS

3.1 Each Settlement Class Member may submit a Claim until the Claims Deadline. Each Settlement Class Member with an Approved Claim shall be entitled to a cash payment in an amount reflecting the *pro rata* portion of the Net Settlement Fund as further described in Section 3.2.

3.2 The Net Settlement Fund shall be allocated such that 50% is reserved solely for residents of Illinois and the other 50% is reserved solely for non-Illinois residents. The *pro rata* amount that each Settlement Class Member shall be entitled to from the Net Settlement Fund will depend on the precise number of Approved Claims for Illinois and non-Illinois residents. Each Approved Claim filed by Illinois residents will be entitled to a *pro rata* share of the one-half of the Net Settlement Fund allocated to Illinois residents. Each Approved Claim filed by non-Illinois residents will be entitled to a *pro rata* share of the one-half of the Net Settlement Fund allocated to non-Illinois residents.

3.3 **Distribution of the Settlement Fund.** The Settlement Administrator shall distribute the funds in the Settlement Fund within the following time periods with respect to each such payment.

3.3.1 The Settlement Administrator shall pay to Class Counsel any attorneys' fees, costs, and expenses ordered by the Court, as described in Section 4.1 no later than three (3) business days after the Funding Date;

3.3.2 No later than three (3) business days after the Funding Date, the Settlement Administrator shall pay to Class Counsel the amount of any Service Awards awarded by the Court, according to the process described in Section 4.2;

3.3.3 No later than fourteen (14) days after the Funding Date, the Settlement Administrator shall pay all Approved Claims to Settlement Class Members. The Settlement Administrator shall pay, from the Net Settlement Fund, all Approved Claims by (a) check via first class U.S. mail; or (b) electronic means via Venmo, CashApp, Zelle, PayPal, etc., upon election of the Settlement Class Member, which the Parties agree to make available as alternative payment options. All cash payments issued to Settlement Class Members via check will state on the face of the check that it will expire and become null and void unless cashed within one hundred and fifty (150) days after the date of issuance. To the extent that any checks issued to a Settlement Class Member are not cashed within one hundred fifty (150) days after the date of issuance, such uncashed check funds shall be addressed in the manner set forth in Section 8.11.

3.3.4 Prior to paying Approved Claims, the Settlement Administrator shall be paid for any previously unreimbursed costs of administration.



4. **FEE AND SERVICE AWARDS**

4.1 **Attorneys' Fees and Costs.** Pursuant to Fed. R. Civ. P. 23(h), Class Counsel may move for an award of attorneys' fees not exceeding one-third of the Settlement Fund (\$1,416,666.67), plus reimbursement of reasonable costs and expenses incurred in relation to their investigation and litigation of this Action not exceeding \$125,000.00, both to be paid from the Settlement Fund, by filing a Fee and Cost Application with the Court. Defendant may choose to oppose some or all of Plaintiffs' request for fees. The Parties agree not to appeal any Court award of attorneys' fees and costs and expenses that is consistent with the foregoing limitations.

4.1.1 Except as provided in this Section 4.1, the Parties will bear their own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Action. Defendant's obligation to pay attorneys' fees and costs to any person incurred on behalf of Plaintiffs and/or the Settlement Class in this Action shall be limited to the judicially approved amount established pursuant to this Section, and such obligation shall be paid from the Settlement Fund. In no event shall Defendant's aggregate liability under this Settlement, including attorneys' fees and costs, exceed \$4,250,000 (four million two hundred and fifty thousand dollars). Any allocation of fees between or among Class Counsel and any other person representing Plaintiffs or the Settlement Class shall be the sole responsibility of Class Counsel, subject to any alterations by the Court.

4.1.2 The Parties warrant that they commenced negotiations on proposed Attorneys' Fees and Costs (along with the Service Award discussed in Section 4.2) only after they reached agreement on all other materials terms of this Settlement Agreement.

4.1.3 In the event that the Settlement does not become effective for any reason, including termination by one or more of the parties as contemplated by the terms of this

Agreement, the agreement to pay Attorneys' Fees and Costs shall be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated proceedings in this matter. No statements made or actions taken by either party in furtherance of the Fee and Cost Application constitute or may be used as an admission of, or evidence of, the validity or invalidity of any claims for Attorneys' Fees and Costs.

4.2 **Payment to Class Representatives.** In recognition of the significant time and effort Class Representatives have personally invested in the Action, including but not limited to consulting with Class Counsel and providing information and input necessary for the prosecution of this case, which efforts have provided a benefit to the Settlement Class, each Class Representative will be entitled to apply to the Court for a Service Award and Defendant will not object to a Service Award to be paid to Class Representatives from the Settlement Fund, provided that it does not exceed \$10,000.00 each, subject to Court approval. Within three (3) business days of the Funding Date, and after receiving W-9 forms from the Class Representatives, the Settlement Administrator shall pay to Class Counsel the amount of any service payments awarded by the Court out of the Settlement Fund, and Class Counsel will disburse such funds. No interest will accrue on such amounts at any time. The Parties warrant that they commenced negotiations on the proposed Service Award (along with the Attorneys' Fees and Costs discussed in Section 4.01) only after they reached agreement on all other material terms of this Settlement Agreement.

4.2.1 The Parties agree that the effectiveness of this Settlement Agreement does not require and is not conditioned upon the Court's approval of a Fee Award and/or Service Awards. No decision by the Court, or modification, reversal, or appeal of any decision by the

Court, concerning the payment of a Fee Award and/or Service Awards shall be grounds for cancellation or termination of this Settlement Agreement.

**5. PRELIMINARY APPROVAL**

5.1 The Parties shall cooperate in good faith, and agree, subject to their fiduciary and other legal obligations, to take all reasonably necessary steps to obtain the Court's approval of the terms of this Settlement Agreement.

5.2 **Order of Preliminary Approval.** By November 22, 2024, Plaintiffs shall move the Court for entry of the Preliminary Approval Order in substantially the form attached as Exhibit A. Pursuant to the motion for preliminary approval, Plaintiffs will request that the Court:

5.2.1 Find it will likely be able to approve the Settlement as fair, reasonable, and adequate;

5.2.2 Preliminary certify the Settlement Class for settlement purposes only;

5.2.3 Approve the form, content, and manner of Class Notice and find that the notice program set forth in this Agreement constitutes the best notice practicable under the circumstances, and satisfies due process and Rule 23 of the Federal Rules of Civil Procedure;

5.2.4 Direct that Class Notice be sent to the Settlement Class;

5.2.5 Appoint EisnerAmper as the Settlement Administrator;

5.2.6 Permit Plaintiffs to file an Amended Complaint in the Action to add Plaintiffs Cavanaugh and Timmons;

5.2.7 Set the date and time for the Final Approval Hearing, which may be continued by the Court from time to time without the necessity of further notice to the Settlement Class except for an update to the Settlement Website; and

5.2.8 Set the Claims Deadline, the Objection Deadline, and the Opt-Out Deadline.

## 6. SETTLEMENT ADMINISTRATION

6.1 Third-Party Settlement Administrator. The Settlement will be administered by the Settlement Administrator, who will be jointly chosen and overseen by Class Counsel and Defendant's Counsel, subject to Court approval.

6.2 The Settlement Administrator's responsibilities include but are not limited to: (i) holding and supervising the Settlement Fund; (ii) providing notice in accordance with the Court-approved Notice Plan; (iii) obtaining Settlement Class Member contact information; (iv) obtaining new addresses for returned email and mail; (v) setting up and maintaining the Settlement Website; (vi) fielding inquiries about the Settlement; (vii) processing claims; (viii) acting as a liaison between Class Members and the Parties regarding claims information; (ix) approving claims, rejecting any invalid Claim Form, including those where there is evidence of fraud; (x) directing the payment of Cash Awards to Class Members by check and/or electronic funds transfers; and (xi) any other tasks reasonably required to effectuate the foregoing.

6.3 The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, administration, and implementation of the Settlement Agreement.

6.4 Before the entry of the Final Approval Order, the Settlement Administrator shall only take such action toward notice and settlement administration that is reasonable and necessary. Any reasonable and necessary costs of notice and settlement administration that are incurred prior to the Funding Date shall be paid from the Settlement Fund once it is established. No later than three (3) days after Class Counsel submits the Motion for Preliminary Approval of the Settlement, the Claims Administrator shall provide an estimate—for Defendant’s Counsel’s and Class Counsel’s review and approval—of the amount of reasonable and necessary costs required for mail and email notice, and establish the Settlement Website, as well as any other initial administration costs. In the event that this Settlement Agreement is terminated in accordance with its terms, Defendant shall bear any costs of providing Class Notice already incurred.

## 7. NOTICE TO THE SETTLEMENT CLASS

7.1 **Settlement Class Data.** Any personal information relating to Class Members provided to the Settlement Administrator or Class Counsel pursuant to this Settlement shall be provided solely for the purpose of the notice and claims process under this Settlement. This information shall be kept in strict confidence. Neither the identity of Defendant’s customers nor the Class List Information shall be shared with Plaintiffs or Class Counsel.

7.1.1 Notwithstanding the foregoing, the Settlement Administrator may share with Class Counsel: (a) confirmation that an individual who contacts Class Counsel regarding the Settlement is or is not a Settlement Class Member and information related to any claim that a potential Settlement Class Member did or did not submit (but may not provide any information regarding that individual beyond such yes/no confirmation); and (b) the Efficacy Information.

7.1.2 Class Counsel expressly agrees not to use or reference any information referenced in this paragraph for any purpose beyond seeking or obtaining court approval of this Settlement. For the avoidance of doubt, Class Counsel agrees that it will not use such information in this Action outside of seeking or obtaining Settlement approval, and will not use such information in any manner related to asserting claims on behalf of any party in any other action in any forum or to aide or support any other counsel or party in bringing any claim in any action in any forum.

7.1.3 Defendant's customers shall have the right to negotiate and enter into Data Privacy Agreements with Defendant, Plaintiffs, Class Counsel, and/or the Settlement Administrator (as appropriate) to govern the treatment of any data provided pursuant to this Agreement.

7.1.4 In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

7.2 **Settlement Class List.** Defendant shall have thirty-one (31) days after the Preliminary Approval Order, to contact its customers seeking a list and contact information of all Settlement Class Members for purposes of compiling the Settlement Class List. At a minimum, the communication to Defendant's customers will identify the kinds of contact information that should be provided for the Settlement Class List if available, including Class Members' name, last known address(es), cell phone number(s), and email address(es), and a deadline of thirty-one (31) days to provide this information to Lytx. Defendant, in turn, will provide any Class List information it receives solely to the Settlement Administrator within five (5) days after the thirty-one-day deadline.

7.3 The Notice Program shall consist of the following:

7.3.1 The Notices shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, and/or object to the Settlement Agreement or any of its terms. The Notices shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if submitted in the form and manner set forth in Section 9.1. The Notices shall also specify that any request from exclusion from the Settlement, shall be considered valid only if exercised in the form and manner set forth in Section 9.2.

7.3.2 **Direct Notice.** By no later than the Notice Date and for Settlement Class Members for whom an email address is unavailable, the Settlement Administrator shall send Notice, substantially in the form attached as Exhibit C, via First Class U.S. Mail (the “Postcard Notice”). For Settlement Class Members for whom a valid email address is available in the Class List, the Settlement Administrator shall send Notice via email (the “Email Notice”), substantially in the form attached as Exhibit B. In the event transmission of email notice results in any “bounce-backs,” the Settlement Administrator shall, where reasonable, correct any issues that may have caused the “bounce-back” to occur and make a second attempt to re-send the Email Notice. If the second attempt to re-send the Email Notice is unsuccessful, the Settlement Administrator shall send the Postcard Notice.

7.3.3 **Publication Notice.** The Parties acknowledge that a robust Publication Notice is necessary. The Settlement Administrator will effectuate a plan to reach the Settlement Class Members including social media, online advertising targeted at commercial vehicle drivers, and print media.

7.3.4 **Reminder Notice.** The Parties agree that the Settlement Administrator shall send a reminder Notice via email, substantially in the form attached as Exhibit B (with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice), to all Settlement Class Members for whom a valid email address is available in the Class List. The Reminder Notice shall be transmitted halfway through the claims period, i.e. forty-five (45) calendar days after the Notice Date.

7.3.5 **Settlement Website.** By no later than the Notice Date, Notice shall be provided on a case-specific settlement website that will enable Settlement Class Members to file Claim Forms online. The Notice provided on the Settlement Website shall be substantially in the form of Exhibit D hereto (the “Long-Form Notice”). The Settlement Website shall include at least the following information: (i) a summary of the Action and the settlement terms; (ii) a “Contact Us” page with Settlement Administrator contact information; (iii) the Settlement Agreement, motions for approval and for attorneys’ fees, when available, and any other important documents in the case; (iv) important case dates and deadlines, including the Objection/Exclusion Deadline and the Claim Deadline; (v) a summary of Settlement Class Member rights, including how to object to and request exclusion from the Settlement, and how to make a claim; and (vi) the date, time, and location of the Final Approval Hearing.

7.3.6 **Toll-Free Telephone Number.** The Notice Program shall also establish a toll-free telephone line for Settlement Class Members with an interactive voice response (“IVR”) system to provide Settlement Class Members with responses to frequently asked questions and provide essential information regarding the Action. Any “scripts” used with the IVR, along with FAQ’s, must be pre-approved by the Parties.



7.3.7 **CAFA Notice.** The Settlement Administrator, on behalf of Defendant, shall server the Class Action Fairness Act (“CAFA”) Notice required by 28 U.S.C. § 1715 within ten (10) days of the filing of the Preliminary Approval Motion. The costs of such CAFA Notice shall be paid from the Settlement Fund as Settlement Costs.

7.4 **Efficacy Information.** Defendant agrees to provide the Settlement Administrator with statistical information regarding its efforts to obtain Class List information sufficient for the Settlement Administrator to opine as to the efficacy of the overall notice program (“Efficacy Information”). Efficacy Information may include the number of Settlement Class Members identified, the number of Settlement Class Members contacted, and the number of Settlement Class Members who provide the requested Class List information. Efficacy Information does not include any identifying information of Defendant’s customers or Settlement Class Members. The Parties agree to discuss in good faith whether Lytx will provide any additional information to the Settlement Administrator for this purpose.

7.5 **Declaration of Compliance.** The Settlement Administrator shall prepare a declaration attesting to compliance with the Class Notice requirements of this Settlement Agreement. Such declaration shall be provided to Class Counsel and Defendant’s Counsel no later than sixteen (16) days prior to the Final Approval Hearing, and Class Counsel will file the declaration with the Court in support of Final Approval.

7.6 **Best Notice Practicable.** The Parties agree that compliance with the procedures described in this Section is the best notice practicable under the circumstances and is due and sufficient notice to the Settlement Class the pendency of the Action, certification of the Settlement Class, the terms of the Settlement Agreement, and the Final Approval Hearing, and

satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law, rule, and/or regulation.

## **8. CLAIMS PROCESS**

8.1 Each Settlement Class Member who does not timely and validly request exclusion from the Class as required in this Agreement shall be entitled to make a claim.

8.2 To make a claim, Class Members must submit by the Claims Deadline a valid and timely Claim Form, which shall contain the information set forth in Exhibit E to this Agreement, including the Class Member's full name and address.

8.3 The Claims Administrator shall be responsible for receiving and keeping safe and secure all Claims Forms.

8.4 The Claims Administrator shall review Claim Forms submitted by Class Members to determine whether they are eligible for settlement payment.

8.5 The Claims Administrator shall reject any Claim Forms that are incomplete, inaccurate, or not timely received, and is not required to, but may first request additional information.

8.6 Counsel for the Parties shall be kept apprised of the volume of claims, and the volume and nature of defective claims, and Class Counsel are permitted to communicate with Class Members as they deem appropriate to cure such deficiencies. Defendant shall have the right to suggest denial of claims if Defendant has a good faith belief that such claims are improper or fraudulent. Any suggested denial of claims shall be provided to Class Counsel in writing. If the Parties cannot agree upon which claims should be denied, then they shall submit the issue to the Court for determination.

8.7 The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator will reject any claim that does not comply in any material respect with the instructions on the Claim Form or is submitted after the Claims Deadline. Each claimant who submits an invalid Claim Form to the Settlement Administrator must be given a notice of the Claim Form's deficiency and an opportunity to cure the deficiency within twenty-one (21) days of the date of the notice. The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

8.8 Defendant's Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Settlement Class Members and to obtain and review supporting documentation relating to such Claim Form. The Settlement Administrator shall follow any agreed decisions of Class Counsel and Defendant's Counsel as to the validity of any disputed submitted Claim Form. To the extent Class Counsel and Defendant's Counsel are not able to agree on the disposition of a challenge, the disputed claim shall be submitted to the Court for determination.

8.9 **Electronic Distribution of Funds.** To the maximum extent possible, and in order to minimize the costs of Settlement Administration, the Claims Administrator will pay Cash Awards via electronic funds transfer. The Claims Administrator shall provide a secure portal on the Settlement Website by which Class Members can have the option of having their claim payment transmitted to them electronically, through Automated Clearing House ("ACH") direct deposit, or other reliable means.

8.10 **Mailing of Settlement Check.** For Class Members who submit valid and timely claims who do not receive their cash awards via electronic transfer as set forth in Section 8.9, the Claims Administrator shall mail Settlement checks via U.S. mail. If any settlement checks are returned, the Claims Administrator shall attempt to obtain a new mailing address for that Class Member by taking the steps described in Section 7.3. If, after a second mailing, the settlement check is again returned, no further efforts need be taken by the Claims Administrator to resend the check. The Claims Administrator shall advise Class Counsel and Defendant's Counsel of the names of the claimants whose checks are returned by the postal service as soon as practicable. Each settlement check will be negotiable for one hundred fifty (150) days after it is issued.

8.11 After 150 days, any unclaimed or non-deliverable funds, including uncashed checks, shall be addressed as follows:

8.11.1 If the amount of unclaimed or non-deliverable funds is less than \$100,000, this amount will be transferred to a mutually agreeable *cy pres* approved by the Court.

8.11.2 If the amount of unclaimed or non-deliverable funds is more than \$100,000, a second *pro rata* distribution shall be made to the Settlement Class Members who cashed their initial checks. That settlement check will be negotiable for one hundred fifty (150) days after it is issued. In the event that there are unclaimed or non-deliverable funds remaining after the second *pro rata* distribution, this amount will be transferred to a mutually agreed *cy pres* approved by the Court.

8.12 To the extent a Class Member is entitled to a Cash Award in an amount that meets or exceeds the threshold for reporting the payment to the IRS, the Claims Administrator shall engage in additional direct notice to such persons to attempt to obtain the necessary tax forms. The Claims Administrator may engage in more than one round of such additional notice.

Payments shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee's name and Social Security number on an IRS Form 1099. If this Settlement Agreement is not approved or for any reason the Effective Date does not occur, no payments or distributions of any kind shall be made from the Settlement Fund, other than payments to the Claims Administrator for services rendered and costs incurred.

## 9. **OBJECTIONS AND EXCLUSIONS**

9.1 **Objections to Settlement.** Any Settlement Class Member who intends to object to this Agreement must present the objection in writing, which must be postmarked on or before the Objection Deadline, and include a caption or title that identifies it as "Objection to Class Settlement in *Lewis, et al. v. Lytx, Inc.*, Case No. 3:22-cv-00046-NJR." So-called "mass" or "class" objections shall not be allowed. Specifically, each objection must be on behalf of one Settlement Class Member and shall not incorporate other Settlement Class Members by list, case name, description of a putative class, etc.

9.1.1 The written objection must also include: (1) the objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through their Objecting Attorneys who shall file an appearance with the Court in accordance with the Local Rules); (6) a list of all class action settlements to which the objector has lodged an objection in the last five years; (7) the objector's

handwritten or electronically imaged written signature; and (8) if a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, a statement identifying each such case by full case caption and amount of payment received.

9.1.2 The Parties will have the right to depose or seek discovery from any objector to assess whether the objector has standing and to understand the nature of the objection.

9.2 **Exclusions from Settlement.** Any Settlement Class Member who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. To exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator, and must include in any such exclusion request: (a) his/her full name, address, and current telephone number; (b) the entity or entities for whom they drove and when; (c) all grounds for the request to be excluded, with factual and legal support for the stated request, including any supporting materials; (d) the identification of any other exclusion requests he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last five years; and (e) the requestor's signature. If represented by counsel, the Settlement Class Member requesting to be excluded must also provide the name and telephone number of his/her counsel. So-called "mass" or "class" opt-outs shall not be deemed as valid opt-outs. Specifically, each opt-out must be on behalf of one Settlement Class Member and shall not incorporate other Settlement Class Members by list, case name, description of a putative class, etc. To be valid, a

request for exclusion must be postmarked or received by the date specified in the Notice and approved by the Court. If the total number of opt-outs exceed 350 Settlement Class Members, Lytx shall have the right to terminate this Agreement.

9.2.1 Any Settlement Class Member who does not, using the procedures set forth in this Agreement and the Notice, seek exclusion from the Settlement Class will be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the Releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims. A Settlement Class Member who opts out of the Class may not object to this Agreement or the Settlement and is not entitled to be heard at the Final Approval Hearing.

9.3 **Other Challenges to Settlement.** Any challenge to the Settlement Agreement or the Final Judgment shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

## 10. **FINAL APPROVAL HEARING AND FINAL APPROVAL ORDER**

10.1 If the Settlement is approved preliminary by the Court, and all other conditions precedent to the Settlement have been satisfied, no later than fourteen (14) days prior to the Final Approval Hearing:

10.1.1 Plaintiffs shall request that the Court enter the Final Approval Order in substantially the form attached as Exhibit F, with Class Counsel filing a memorandum in support of the motion;

10.1.2 Class Counsel and/or Defendant may file a memorandum addressing any objections to the Settlement.

10.2 At the Final Approval Hearing, the provisions of this Agreement should be approved, whether the Settlement should be finally approved as fair, reasonable, and adequate, whether any objections to the Settlement should be overruled, whether the fee award and any service payment to the Class Representatives should be approved, and whether a judgment reflecting final approval of the Settlement should be entered.

10.3 At the Final Approval Hearing, the Court will consider and determine whether: (i) it has personal and subject matter jurisdiction over all Settlement Class Members; (ii) to approve the Settlement Agreement as fair, reasonable, and adequate, and in the best interests of, the Settlement Class Members; (iii) to find that the Class Notice implemented pursuant to the Agreement constitutes the best practicable notice under the circumstances, is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and meets all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court; (iv) to find that the Class Representatives and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement; (v) to dismiss the Action with prejudice, without fees or costs to any party except as provided in the Settlement Agreement; (vi) to retain jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Settlement; and (vii) to enter Final Judgment.

## **11. FINAL JUDGMENT**

11.1 The judgment entered at the Final Approval Hearing will be deemed final for purposes of this Agreement after the latest of the following: (i) if no individual, or counsel on the individual's behalf, has filed an appearance that would give the individual potential standing to appeal the Final Approval Order, then on the date the settlement is finally approved by the Court;



(ii) if an individual, or counsel on the individual's behalf, has filed an appearance, and no notice of appeal of the Final Approval Order is filed, the expiration date of the time for filing any appeal from the judgment, including any extension of such expiration date granted by order of any court of competent jurisdiction, by operation of law, or otherwise; (iii) the date of final affirmance on an appeal of the judgment, the expiration of the time for a petition for rehearing and a petition for certiorari of the judgment, or, if such a petition is filed, either the denial of that petition or, if the petition is granted, the date of final affirmance of the Judgment following review pursuant to that grant; or (iv) the date of final dismissal of any appeal of the judgment or the final dismissal of any proceeding to review the judgment.

## **12. RELEASE OF CLAIMS**

12.1 The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

12.2 Upon the Effective Date, Plaintiffs, Settlement Class Members, and the Releasing Parties shall be deemed to have released the Released Claims against the Released Parties, as defined above.

12.3 Upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, shall, either directly, indirectly, representatively, or in any capacity, be permanently barred and enjoined from filing, commencing, prosecuting, continuing, pursuing, intervening in, or participating (as a class member or otherwise) in any lawsuit, action, or other proceeding in any jurisdiction (other than participation in the Settlement as provided herein) against any Released Party based on the Released Claims.

12.4 Upon the Effective Date, Plaintiffs, the Settlement Class Members, and the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to

the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY

12.5 Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Plaintiffs, the other Settlement Class Members, and the Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have.

### **13. NO ADMISSION OF LIABILITY**

13.1 Lytx maintains that neither it, its technology (including its MV+AI technology), or its customers by using its technology collects, captures, possesses, obtains, stores, uses, disseminates, discloses, or profits from biometric identifiers or information.

13.2 Defendant's agreement as to certification of the Settlement Class is solely for purposes of effectuating the Settlement and no other purpose. Defendant retains all of its objections, arguments, and defenses with respect to class certification and any other issue, and reserves all rights to contest class certification and any other issue if the Settlement set out in this

Agreement does not result in entry of the Final Approval Order and Judgment, if the Court's approval is reversed or vacated on appeal, if this Settlement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective.

13.3 The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the Settlement, and that if the Settlement set forth in this Settlement Agreement is not finally approved, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective, this agreement as to certification of the Settlement Class becomes null and void ab initio, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of any class, or in support of an argument for certifying any class for any purpose related to the Lewis Action, the Cavanaugh Action, the Timmons Action, or any other proceeding.

13.4 Neither the Settlement Agreement, nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement, including court orders: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, certifiability of a class, or of any wrongdoing or liability of any of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Parties in any civil or administrative proceeding before any court, administrative agency or other tribunal.

13.5 However, the Settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement.

Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Approval Order and Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

#### 14. **TERMINATION OF AGREEMENT**

14.1 This Settlement Agreement may be terminated by either Party by serving on counsel for the opposing party and filing with the Court a written notice of termination within ten (10) days (or such longer time as may be agreed between Class Counsel and Defendant's Counsel) only upon any of the following occurrences:

14.1.1 the Court rejects, materially modifies, or materially amends or changes the terms of the Settlement as embodied in this Settlement Agreement unless such modification or amendment is accepted in writing by all Parties;

14.1.2 the Court declines to enter, without material change, the material terms in the proposed Preliminary Approval Order or the proposed Final Approval Order and Judgment; or

14.1.3 an appellate court reverses the Final Approval Order and Judgment, and the Settlement is not reinstated and finally approved without material change by the Court on remand.

14.2 To avoid ambiguity, the Order on Attorneys' Fees shall not constitute grounds for termination under this Section. In the event of a termination of this Settlement Agreement based

on an occurrence specified above, Class Counsel and Defendant's Counsel agree to negotiate in good faith in an attempt to reach an appropriate, amended settlement agreement.

14.3 If either Plaintiffs or Defendant terminate this Agreement as provided for above, the Agreement shall be of no force and effect and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if this Agreement had never been executed, and any orders entered by the Court in connection with this Agreement shall be vacated. However, any payments made to the Claims Administrator for services rendered up to the date of termination shall not be refunded to Defendant.

## 15. MISCELLANEOUS

15.1 **Real Parties in Interest.** In executing this Settlement Agreement, Plaintiffs, on behalf of themselves and the Settlement Class, and Class Counsel represent and warrant that, as far as they are aware, Settlement Class Members are the only persons with a legal interest in any of the claims that are described or referred to herein, or in any of the pleadings, records, and papers in the Action, and, except as provided herein, Plaintiffs and Class Counsel are unaware of any Released Claims or part thereof having been assigned, granted or transferred in any way to any other person, firm, or entity.

15.2 **Claims Against Cash Awards.** In the event a third party, such as a bankruptcy trustee, former spouse, or other third party has or claims to have a claim against any of a Cash Award made to any Class Member, it is the responsibility of the Class Member to transmit the funds to such third party, and neither the Parties nor the Claims Administrator will bear any responsibility or liability to such third party.

15.3 **No Tax Advice.** Plaintiff, Class Counsel, Defendant, Defendant's Counsel, and the Claims Administrator make no representations as to the taxability of the relief to any Class Member. Class Members are responsible for seeking their own tax advice at the own expense.

15.4 **Voluntary Agreement.** This Settlement Agreement is executed by the Parties voluntarily and each of the Parties warrants that it or he has executed this Settlement Agreement without being under duress or undue influence from any source.

15.5 **Binding Effect.** This Settlement Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

15.6 **Parties Represented by Counsel.** The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Settlement Agreement by independent counsel of their own choosing, that they have read this Settlement Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Settlement Agreement and of its legal effect.

15.7 **Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments, in law or equity or otherwise, of or against any of the Released Claims, and, further, Plaintiffs warrant they are fully entitled and duly authorized to release the Released Claims.

15.8 **Amendment.** The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

15.9 **Entire Agreement.** This Agreement contains the entire understanding between Defendant and Plaintiffs on behalf of themselves and the Settlement Class, regarding the Settlement of the Action, and this Settlement Agreement supersedes all previous negotiations,

agreements, commitments, understandings, and writings between Defendant and Plaintiffs, including through their respective counsel, in connection with the settlement of the Action.

15.10 **Headings.** The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

15.11 **Exhibits.** All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

15.12 **Time Periods.** The time periods and dates described herein are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties.

15.13 **Construction and Interpretation.** This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms' length negotiations among the Parties. Because all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

15.14 **Governing Law.** This Settlement Agreement is entered into in accordance with the laws of the State of Illinois and shall be governed by and interpreted in accordance with the laws of the State of Illinois, without regard to its conflict of law principles.

15.15 **Further Assurances.** Each Party shall do any and all acts or things reasonably necessary to carry out the express intent of this Settlement Agreement. The Parties will cooperate in good faith in the administration of this Settlement and agree to use their best efforts to promptly file a Motion for Preliminary Approval with the Court and to take any other actions required to effectuate this Settlement. Any unresolved dispute regarding the administration of this Agreement will be decided by the Court or by a mediator upon agreement of the Parties.

15.16 **Future Changes in Laws or Regulations.** The Parties agree that changes in law or regulation shall not provide any basis for any attempt to alter, modify, or invalidate this Settlement.

15.17 **Continuing Jurisdiction.** The Parties to this Settlement Agreement stipulate that the Court shall retain jurisdiction over the Action after the entry of the Final Approval Order and Judgment to oversee the implementation and enforcement of this Settlement Agreement, the Preliminary Approval Order, the Final Approval Order and Judgment, and the determination of Class Counsel's request for attorneys' fees and litigation expenses, as well as Service Awards, and any award thereon.

15.18 **Potential Changes to Attachments.** The Parties agree to request that the Court approve the forms of the Preliminary Approval Proposed Order attached as Exhibit A, the Long Form Notice attached as Exhibit B, the Email Notice attached as Exhibit C, the Postcard Notice attached as Exhibit D, the Claim Form attached as Exhibit E, the Final Approval Proposed Order attached as Exhibit F, and the proposed Amended Complaint attached as Exhibit G. The fact that the Court may require non-substantive changes to any of these documents does not invalidate this Settlement Agreement.

15.19 **Notices.** Unless otherwise specifically provided herein, all notices, demands, or other communications between the Parties given hereunder shall be in writing and shall be deemed to have been duly given as of the date of electronic mailing. Postal mailing will be provided as well, addressed as follows:

To Class Counsel:

Randall K. Pulliam  
CARNEY BATES & PULLIAM, PLLC  
One Allied Dr., Ste.1400



Little Rock, AR 72202  
rpulliam@cbplaw.com

To Lytx's Counsel:

Max E. Kaplan  
COZEN O'CONNOR  
1650 Market St., Ste. 2800  
Philadelphia, PA 19130  
MKaplan@cozen.com

15.20 **Costs.** Except as otherwise provided herein, each Party shall bear its own costs.

15.21 **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies and .pdf of executed copies of this Settlement Agreement may be treated as originals.

IN WITNESS WHEREOF, each of the signatories has read and understood this Settlement Agreement, has executed it, and represents that they are authorized to execute this Settlement Agreement on behalf of the Party or Parties they represent, who or which has agreed to be bound by its terms and has entered into this Settlement Agreement.